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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,188	03/10/2004	Erik Haraldsted	APFX.P0001	5293

7590 04/15/2005
Vincent Tassinari
22608 Victory Blvd
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EXAMINER

REESE, DAVID C

ART UNIT PAPER NUMBER

3677

DATE MAILED: 04/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/798,188

Applicant(s)

HARALDSTED ET AL.

Examiner

David C. Reese

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2004.
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
4a) Of the above claim(s) 4-8, 10, 12, 13, 18-21 and 24-30 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-3, 9, 11, 14-17, 22, 23 and 31-33 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Status of Claims

[1] Claims 5-8, 10, 12-13, 18-21, 24-30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected method of forming a fastener and a washer assembly, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 3/15/2005, this however, is not found persuasive because the traversal does not include reasons why the restriction was improper. Therefore, the election is treated as an election without traverse. Examiner would also like to note that the designation of claim 4 as a readable claim on species I is invalid since it concerns subject matter from a species (figure 10) that was not elected. Therefore, claim 4 is considered withdrawn and thus not examined to its merits.

The requirement is still deemed proper and is therefore made FINAL.

Claims 1-33 are pending.

Claim Rejections - 35 USC § 102

[2] The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Art Unit: 3677

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

[3] Claims 1-3, 9, 11, 14-17, 22-23, and 31-33 are rejected under 35 U.S.C. 102(b) as clearly anticipated by Rivaud, US- 4,590,775, because the invention was patented or described in a printed publication in this or a foreign country, or in public use or on sale in this country more than one (1) year prior to the application for patent in the United States.

The shape and appearance of Rivaud is identical in all material respects to that of the claimed design, *Hupp v. Siroflex of America Inc.*, 122 F.3d 1456, 43 USPQ2d 1887 (Fed. Cir. 1997).

As for Claim 1, Rivaud teaches of a pressure earring, comprising:

a support having a first support end (1), a second support end (to the right of 2), and a base (2) positioned between the first support end (1) and the second support end (to the right of 2);

an ornament (7) having a first piece (7) coupled to the first support end (1) and a second piece (7) coupled to the second support end (to the right of 2) to define a gap (between 9) between the first piece (7) and the second piece (7) ;

a pad (5); and

means for coupling the pad to the support (8).

Re: Claim 2, where the means for coupling the pad (5) to the support includes a post attached to the support (3).

Re: Claim 3, where the post (3) is attached to the support (2) to define between the post (3) and the support (2) an opening (inside of 2) leading to a slot.

Re: Claim 9, further comprising:

means for stabilizing the pad to the support (5 against 6 in Fig. 4).

Re: Claim 11, where the ornament (7) conveys an image (arrow 7).

Re: Claim 14, where the pad (5) defines a pad shape that is at least one of cylindrical, tubular, toroidal, rectangular, spherical (5), gum-dropped, and mushroom capped.

Re: Claim 15, where the pad (5) is marked by the ability to return towards an original position, as after having been compressed (Fig. 4 to Fig. 1).

Re: Claim 16, where the pad is resilient (5 in Fig. 4).

Re: Claim 17, where the pad includes a material from a group of materials consisting of silicone, rubber, foam, cork, sponge, polyurethane, polystyrene, polyolefin, fluoropolymer, vinyl, naturally occurring substance, and gel that is configured to be contained in a gel pack (column 2, line 3, "The earring is constituted...of any appropriate material").

As for Claim 22, Rivaud teaches of a jewelry structure comprising:

a support having a first support end (1), a second support end (to the right of 2), and a base (2) positioned between the first support end (1) and the second support end (to the right of 2);

an ornament (7) having a first piece (7) coupled to the first support end (1) and a second piece (7) coupled to the second support end (to the right of 2) to define a gap (between 9) between the first piece (7) and the second piece (7) ;

means for coupling the pad to the support (8).

Re: Claim 23, where the means for coupling the pad to the support includes at least one of a post (3) attached to the support (2) and adhesive “adapted to be positioned between the pad and the support” (Note that it has been held that the recitation that an element is “adapted to” perform a function is not a positive limitation, but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. Thus, in the instant case, adhesive could be “adapted to” be positioned between the pad and the support).

As for Claim 31, Rivaud teaches of a nonpiercing jewelry comprising:

a support having a first support end (1), a second support end (to the right of 2), and a base (2) positioned between the first support end (1) and the second support end (to the right of 2);

an ornament (7) having a first piece (7) coupled to the first support end (1) and a second piece (7) coupled to the second support end (to the right of 2) to define a gap (between 9) between the first piece (7) and the second piece (7) ;

a post (3) attached to the support (2); and

a pad (5) “adapted to be” coupled to the post (5 onto 3).

Re: Claim 32, where the post (3) is attached to the support (2) to define between the post (3) and the support (2) an opening (inside of 2) leading to a slot.

Re: Claim 33, where the support (2) includes a support surface (1) positioned adjacent to the slot (inside of 1).

Conclusion

[4] The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited further to show the state of the art with respect to this particular type of jewelry; as well as their extreme relevance to the current application as many read extensively onto the claimed invention: please see submitted notice of reference cited.

[5] Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Reese whose telephone number is (571) 272-7082. The examiner can normally be reached on 7:30 am-6:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sincerely,
David Reese
Examiner
Art Unit 3677


ROBERT J. SANDY
PRIMARY EXAMINER